

# Meeting Summary | URBAN LEVEL OF FLOOD PROTECTION CRITERIA WORK GROUP MEETING #2

**June 21st, 9:00 am to 3:00 pm**

**Location:** Galleria Rooms 157 and 160, West Sacramento City Hall, 1110 West Capitol Avenue, West Sacramento, CA 95691

## Action Items

(Due Tue 7/5, send to Rebecca Guo: [Rebecca.K.Guo@us.mwhglobal.com](mailto:Rebecca.K.Guo@us.mwhglobal.com))

Send additional comments regarding the following:

1. Revisions to the updated Urban Level of Flood Protection Criteria document
2. Responses to previous comments
3. Any new questions or suggestions you have for improving or clarifying the text

## 1. Welcome and Opening Remarks

Rod Mayer, Assistant Deputy Director, FloodSAFE California, Department of Water Resources (DWR), welcomed participants to the second Urban Level of Flood Protection Criteria Work Group meeting. He thanked the participants for attending and for submitting their comments based on the discussion and materials presented during the first meeting of the ULOP Work Group.

Dorian Fougères, Facilitator with the CSUS, Center for Collaborative Policy, reviewed the agenda and walked through the ground rules. All participants and staff introduced themselves.

## 2. Review of Document Revisions (all changes tracked)

Rebecca Guo, MWH, explained much of the agenda will be dedicated to reviewing the comments received, and explaining DWR's response. A comment log was provided to the Work Group, which organized the comments by topic, and includes a response for each. Changes made to the document were done in track changes to make it easier for members to review. The objective of this meeting is to review comments received and DWR's responses and to continue the discussion. Based on feedback and discussion today as well as on comments submitted after the meeting, DWR will continue to make modifications to the document.

Major Changes to the document include:

- PND-2 rewording
- New definitions
- LOC-2 applicability
- Added emergency to REV-3 (significant change)
- Clarified 200-year floodplain mapping
- Modified panelist requirements
- Modified elevation requirements

### 3. Flow Chart

Ken Kirby, Executive Advisor, FloodSAFE California, DWR, explained they he will review the comments by agenda topic. He mentioned that based on the quality of comments received it was clear the Work Group members spent a lot of time and energy reviewing the document.

#### Comments on the Flow Chart:

Mr. Kirby explained that DWR received a few comments from folks that the flow chart made sense to them, while one comment suggested reversing the order of location and pending land use decision.

One member explained it could go either way, while it seemed more logical to have location come first.

- Mr. Kirby mentioned that staff debated this internally, however this new requirements is not only for urban and urbanizing areas, there are requirements for non-urbanizing. Therefore they are suggesting the land use decision comes first in the flow chart because that is the trigger.

Mr. Kirby invited Work Group members to send in comments if they decide the sequencing does not make sense, he mentioned at this time he is not hearing any objections to the flow.

### 4. Review of Applicability

#### Mr. Kirby reviewed the requirements generally:

Pending land use decisions covered

- Development agreement for property
- Discretionary permit or other discretionary entitlement, or a ministerial permit that would result in the construction of a new residence, for a project
- Tentative map, or a parcel map for which a tentative map was not required, for a subdivision

Located within a flood hazard zone

- Within a special hazard area or an area of moderate hazard on an official (effective) FEMA flood insurance rate map

Covers all of the Sacramento-San Joaquin Valley

- Urban, urbanizing, and nonurban

Mr. Kirby explained DWR got a legal opinion that this legislations applies to all discretionary permits and entitlements, not just new residences.

John Maguire asked how this process will work for projects with vested rights, those which lock in standards. He asked how projects with development agreements based on a finding will be affected when standards and the levee design criteria change.

- Mr. Kirby explained it is his understanding that agreements made before the standards are set, should have conditions written in to follow the updated standards. This is similar to the building code process. He also mentioned that DWR is waiting for legal review on this issue.

Glenn Gebhardt asked what will happen if the 200 year floodplain changes. He explained that the localities have to decide what the best information available is, and if the hydrology changes the design will no longer provide the required level of flood protection.

- Mr. Kirby explained his understanding is that cities and counties are responsible for creating their own 200-year floodplain maps. DWR will provide as much information as possible, but they will not provide all the information needed, and it will not cover all the sources of flooding in the area. Localities will need to review DWR maps and make additions. He recognized how difficult this is for stable planning.
- Les Harder pointed out that cities and counties behind State levees can demonstrate adequate progress to comply until 2025, while those behind a private or city levee there have no time limit.

The group discussed what constitutes an urbanizing area. Mr. Kirby explained that an urban area is defined at 10,000 residents or more. He explained this is independent of jurisdictional boundaries. An urbanizing area is one that is expecting 10,000 resident or more (within the 10-year life span of a finding).

- Mr. Sherry asked if structures on agricultural land (such as a barn) would be subject to these requirements. Mr. Kirby responded yes, if it is adjacent to an urban or urbanizing area, meaning it is surrounded on 3 sides. However, if the topography is drastically different from the adjacent area, such as an area on a bluff overlooking a river, localities might be able to make the case that they are not subject to this requirement.

## **5. California Environmental Quality Act (CEQA)**

Work Group members made many comments and poised many questions about how this process will interact with CEQA during the first ULOP meeting. Some of these included:

- Will the CEQA checklist (Appendix G) be amended?
- Does the use of these criteria trigger CEQA requirements?
- Can the CVFPP PEIR be used for ULOP?

Mr. Kirby explained that we have not received an official legal opinion on these issues back from their counsel.

Scott Morgan, Governor's Office of the Planning and Research (OPR), commented on the CEQA checklist questions. He explained that OPR is looking into this and deciding whether the checklist needs to be amended only for the Central Valley or for outside as well.

Mr. Kirby explained that DWR's general opinion is that developing these criteria will not trigger CEQA. However, once the criteria are set as regulations, it will force the cities and counties to amend their general plan and municipal code which will require the localities to comply with CEQA.

Robert Sherry suggested that this may warrant a change to CEQA to better work with this criteria and process. He explained for example there are EIRs or other environmental documents that localities may be able to apply when these changes occur rather than having to create new studies and opinions. Mr. Kirby agreed that DWR will work with OPR to develop a strategy for how to address this.

## 6. Significant Change

Mr. Kirby explained that in this draft DWR has defined a significant change as one that would reduce the level of flood protection for the area under consideration to at or below 160-year level of flood protection.

One member pointed out how difficult it is to define what 160-year protection is, especially since 200-year protection is not well defined.

- Mr. Kirby acknowledged that this does place the burden on the local agencies.
- Members expressed concern with how they would defend this number; they expressed the need for a level that is both quantifiable and defensible. Base flood elevation may be another option.
- Members suggested adding in examples so the answers might be less specific depending on the situation.

Dave Peterson mentioned for issues such as sea level rise that could cause significant changes he suggested localities consider 20 years of sea level rise when making a finding.

Mr. Gebhardt explained that the worst case scenario for localities is that it comes down to a difference of inches, and then the city cannot claim it is making adequate progress and development plan must change which would require a new financing plan, etc. He articulated this his fear is that projects that cities have with developers that have been years in the making could be stopped at a moment's notice, when the city is left to determine on their own what constitutes 200-year flood protection.

- Mr. Kirby pointed out that the law says "at least 200-year flood protection" and that local agencies can decide to provide a higher level of protection.

Rebecca Wills pointed out that a 20% change implies that the city or county would have notice and time to adjust plans.

Mr. Kirby asked how FEMA policy handles base elevation changes. Gregor Blackburn, FEMA, responded that when a change in standards occurs there are procedures to notify locals about the change when

how long they have until they have to resubmit. Mr. Gebhardt pointed out that FEMA goes through a public input process before they set levels. **Mr. Kirby suggested DWR look to these FEMA polices and try and mirror them.**

## 7. Concept of a Finding

Mr. Kirby reviewed the changes made to the document:

This entire ULOP effort is about

- "Urban level of flood protection" means the [level of protection that is necessary](#) to withstand flooding that has a 1-in-200 chance of occurring in any given year using [criteria](#) consistent with, or [developed by](#), the [Department of Water Resources](#).

For every covered pending land use decision

- "the legislative body of a city or county within the Sacramento-San Joaquin Valley shall not enter into a ... unless the city or county [finds](#), based on [substantial evidence](#) in the record, one of the following:"
  - Cities and counties will have to defend their decisions if challenged
  - DWR is trying to provide clarity and stability

We received several comments about REV and EVD

- Developed by DWR with assistance from the flood management and geotechnical experts participating in Urban Levee Design Criteria work group.
- Open to specific suggestions for improving them.

Mr. Kirby reiterated that there is no enforcement of this law; it is left up to the locals to defend their decisions and DWR to provide the stability.

Mr. Sherry expressed concerns that each locality handles this process differently. All permits issued in line with the finding and code can be challenged to the Board of Supervisors.

- Mr. Kirby responded that the idea behind the criteria is to provide a structured decision-making process to make the finding. He explained that in addition to the State building code, local agencies now have these procedures to go through when making a land use decision.
- Mr. Sherry remarked that making findings based on the building code are pretty concrete, where for land use there is a lot of gray area.
- Mr. Kirby suggested localities make findings for larger geographical areas, have it stand for 20 years and have the finding peer reviewed to make it more defensible.

Ms. Wills pointed out for many jurisdictions the process for issuing building permits is fairly routine and that this criteria will change that process.

- Jim McDonald clarified that the intent is to make a citywide finding once every 20 years; it is not to scrutinize every building permit issued.

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Mr. Blackburn asked how the updated to the building code requiring additional freeboard effect the finding.

- Mr. Kirby responded that localities can choose to follow the FEMA procedure to estimate base flood elevation.

George Booth commented that since the 200-year flood plain is not clearly defined and does not take into account local creeks or drainage, and locals have to expend a lot of resources to define what 200-year of flood protection is. He mentioned there must be a way to comply with freeboard.

Mr. Peterson pointed out that “withstanding flooding” is not defined within the document.

- Jami Childress-Beyers, CalEMA, responded that in recovery it is 4 feet of drywall so it needs to be that or greater or the whole wall needs to be replaced.
- Mr. Kirby responded that “withstand flooding” assumes there is very minimal damage, and that it is consistent with the building code and Title 23.
- Mr. Mayer clarified that the document has spelled out what an acceptable amount of damage would be by referencing existing rules such as FEMA and Title 23 to be consistent.
- Mr. Kirby offered that the next draft should be more explicate.

Mr. Peterson suggested the area of applicability be clarified; this is an issue for example with flat floodplains with a channel where 6 inches of flooding could be evenly spread around a large area. He explained that for urban areas, U.S. Army Corps of Engineers (USACE) relates decision criteria for participation in urban flood control with 800 cfs for the 10-percent flood (Title 33 of the Code of Federal Regulations Section 238.7)

Members expressed concerns about the timeframe, while San Joaquin County has already begun the studies they will need to make a finding for 2015 to begin to comply.

- Mr. Kirby mentioned that it would take legislative actions to change the 2015 date and other timeframes.
- He mentioned that if DWR got funding or the direction from the Legislature to assist in the local efforts to develop the maps, the Department would be happy to do so.

Jim Stone asked about the panel of experts for peer review. He asked why it is suggested in the criteria that no more than one panelist should be returning from the last peer review of the finding. He expressed concern that this requirement would force localities to recreate the wheel every time they have to review a finding and pay panelists to get up to speed.

- Mr. Mayer explained this suggestion is there to prevent the same people from continuing to make the same mistakes. Since the usual review process will happen every 15 years DWR does not view this as such a large issue.
- Mr. Harden suggested the criteria require “at least 1 panelist must be new.” Members felt this was a good compromise.

Mr. Maguire asked if maintenance is required after the local agency achieves the level of flood protection. He pointed out that most cities and counties have no control over maintenance. He worries the local operators will not have the incentive to go beyond the State maintenance standards, as these criteria may require.

- Mr. Kirby responded that DWR built the 20-year life span for a finding into the criteria; it was not specified in the law. This grace period is allowed based on the assumption that the system will be maintained to the level the finding was based on.
- Ms. Wills pointed out this is an opportunity for creative solutions such as the local agency requiring the developer to provide funding to the reclamation district for maintenance.
- Mr. Kirby suggested that the Urban Levee Design Criteria work group look into operation and maintenance and how that may affect the urban level of protection.

## 8. Expiration of a Finding

What can cause a finding to expire?

- Time (REV-1)
- Lack of periodic review, or uncorrected deficiencies (REV-2)
- Significant change in level of protection (including from an emergency) (REV-3)

Considerations for partial expiration

Mr. Kirby clarified that the expiration is not in the law, because again, the law does not grant the 20-year life span for the finding. That is established in the criteria set by DWR so that local agencies do not have to make a new finding for every permit they issue.

- Mr. Maguire suggested the document be more explicit on what is from the legislation and what has been added by DWR.

Mr. Gebhardt expressed concerns that if DWR changes the criteria, it could result in an expired finding and immediately halt development in the community. He wonders how his city is going to ensure the people that want to invest in the community that the criteria will not change.

- Mr. Mayer explained that DWR will not abruptly change the criteria; there would be a transition period. Any changes would need to go through the rule making process through the Office of Administrative Law, which is a lengthy and public process.
- Mr. Gebhardt suggested that this process be articulated in the criteria.

Mr. Peterson asked when the 20-year life span begins. Mr. Kirby responded that the time is tied to when the city or county finds that the property, new residence, or subdivision meets the criteria for demonstrating urban level of flood protection.

## 9. Adequate Progress

Conditions for Adequate Progress are specified in California Government Code Section 65007(a)

If you use Adequate Progress to approve a pending decision in urban or urbanizing areas, cities and counties must determine the area is “protected by project levees”

- Can use LFPZ maps to make this determination

Mr. Kirby explained that DWR received comments from the group that while the DWR maps are not regulatory, the reference made to them in the document made people nervous they feel like they are regulatory. He explained the DWR maps are required to show the land that is protected by levees, and local agencies may use those maps to make their determination on level of flood protection. He clarified that local agencies can decide to use other maps as long as they are defensible. He also mentioned if people discover mistakes in the DWR maps to bring those to their attention.

Mr. Kirby explained there were comments submitted questioning the Central Valley Flood Protection Board’s (Board) role in the process. He explained that the Board has a commenting role. The Board does have the authority to grant local agencies slack if the State does not deliver on any of their commitments.

Mr. Maguire asked if project scope and cost are defined in the document. Mr. Kirby responded that DWR has not attempted to define this, however if people feel it would be helpful they can.

- Some members voiced their preference to leave it flexible for the local agencies rather than trying to define it. Members voiced that it would be best if DWR could provide some direction.

## 10. Location

- Sources of data to develop maps
- Must consider all relevant sources of flooding
- Official FEMA map

Mr. Kirby explained it is pretty clear these criteria apply to locations within the Central Valley. Areas should consider all flooding sources, to determine whether they are in a flood hazard zone. On this topic the document defers to the FEMA definitions for flood hazard zone, special flood hazard area, and moderate flood hazard area. FEMA also has a process for determining whether a location is within flood hazard zone through the Flood Insurance Rate Maps (FIRM) published by FEMA.

Mr. Blackburn explained that FEMA’s process for updating FIRM maps takes about 5 years and involves many meetings with the community before the regulatory map is set in place. The effected community has an opportunity during “discover period” to provide input. FEMA relies on the local communities for information (such as hydrology and Lidar). The local communities help direct FEMA on what areas to look at.

Mr. Kirby mentioned that DWR is developing 200-year floodplain maps, but again those maps will not take into consideration local flooding sources and drainage. Mr. Kirby suggested that a possible recommendation this group could make the legislature would be to give DWR the funding and authority to assist local communities in their efforts to develop their local 200-year floodplain maps through a



defined process. He explained that if there is an interest in pursuing this, it would have to go to the legislature. Ricardo Pineda, DWR, added that the current scope of DWR's mapping includes looking at flooding sources that affect the state plan of flood control, those that have a connection with that flood control system and those that may have impacts within those flood plains.

Many Work Group members expressed support for this idea. One member pointed out one of the biggest benefits would be to bring attention what a large task this effort would be for localities. Having State funding for this effort would also help the local agencies immensely.

## **11. Discretionary Permits**

Mr. Kirby explained that some members commented that because these criteria apply to all discretionary permits, which include such things as liquor licenses, that this may not have been intended by the legislation. Mr. Kirby explained that DWR has asked their legal counsel for an opinion on this, to see if DWR has the authority to make this clarification. If not, then it would need to come from the Legislature. Mr. Mayer added that DWR counsel referred to the bill analysis support this opinion which supported that the law does apply to all discretionary permits.

Mr. Sherry suggested that if the document defined that a "project" is it would help with this permitting issue.

## **12. Elevation Requirements**

Base flood: elevation of flooding, including wave height, having a 0.5 percent chance of being equaled or exceeded in any given year.

Areas along streams regulated by the Board

- Title 23 of the CA Code of Regulations, Section 4
- Lowest floor must be 2 feet above the base flood

For areas not regulated by the Board

- California Building Code Section 1612
- Lowest floor must be 1 foot above the base flood for most types of structures

Mr. Harder expressed concerns that Title 23 relates to the original flood profile of 1957, and does not use the term base flood elevation. Butch Hodgkins, Central Valley Flood Protection Board, mentioned that the Board is currently working to update the regulation. He mentioned the Board is currently considering a standard of 2 feet above the design (base elevation). Mr. Gebhardt expressed concern that 2 feet seems to leave a lot of uncertainty when try to design for a 200 year flood event.

## **13. Open Session for Additional Questions and Comments**

Members asked what process the State will use to make the criteria final. Mr. Kirby explained that after the Work Group input process ends, DWR will take the draft and hold public comment workshops. Then the criteria will go through the formal rule making process with the Office of Administrative Law which

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includes public input. This process generally takes 1.5 to 2 years. The target date to have final criteria set as regulation is 2014.

Mr. Peterson pointed out that many of the kinks and shortfalls with the criteria will not be apparent until local agencies really use and work with it. He suggested allowing more time for agencies to begin working with the criteria before it is set into regulation, since it is difficult to amend. Mr. Mayer commented that while DWR has considered this issue and approach, they feel it is better for the local agencies to have the criteria set in regulation to work from. However, DWR will work closely with cities and counties to monitor the criteria and how it works in the real world.

One member asked how federally recognized tribes are involved in this process. Mr. Kirby explained that it only applies to cities and counties jurisdictions, so if a tribe is building a casino the city or county the location falls within would need to approve the land use decision based on these criteria.

Members pointed out that in development agreements, cities and counties often include language that the developer must comply with new regulations as they come up.

Members asked how DWR and these criteria are coordinating with the Delta Stewardship's Delta Plan. Mr. Kirby explained that DWR provides comments on the Delta Plan to the Stewardship, but ultimately it is up to the Stewardship to accept the comments or not. He admitted there are some inconsistencies; however, they were called out in the comments that DWR submitted.

For nonurban areas, Mr. Mayer had pointed out that the urban level of flood protection requirements affect land use decisions for nonurban areas in order to comply with the legislation. These nonurban areas have to make a finding to determine that they comply with FEMA standards. This will be updated in the next version.

## 14. Recap of Action Items and Next Steps

Mr. Fougères reviewed the action items (see page 1 of the summary). Staff set the deadline that all comments should be submitted to Rebecca Guo with MWH by July 5<sup>th</sup>. The next meeting of the Work Group will be held Monday, August 1<sup>st</sup> at the same location (Galleria Rooms 157 and 160, West Sacramento City Hall, 1110 West Capitol Avenue, West Sacramento, CA 95691) from 9:00am - 3:00pm. Staff thanked all the participants for attending and for continuing to provide quality input to the process.

## Attendance

- |   |  |
|---|--|
| 1. Jeremy Arrich, Department of Water Resources (DWR) | 4. Charlotte Chorneau, Center for Collaborative Policy (CCP) |
| 2. Gregor Blackburn, FEMA                             | 5. Jami Childress-Byers, CalEMA                              |
| 3. George Booth, Sacramento County                    | 6. Paul Daves, CalTrans                                      |
|   | 7. Dorian Fougères, CCP                                      |

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8. Angela Freitas, Stanislaus County
9. Glenn Gebhardt, City of Lathrop
10. Rebecca Guo, MWH
11. Paul Hanson, City of Woodland
12. Les Harder, HDR
13. Butch Hodgkins, DWR
14. Mike Inamine, DWR
15. Gary Jakobs, American Planning Association, California Chapter
16. Ken Kirby, DWR
17. Steve Lindbeck, City of Roseville
18. Hoa Ly, DWR
19. John Maguire, San Joaquin County Public Works, Flood Management Division
20. Rod Mayer, DWR
21. Jim McDonald, City of Sacramento
22. Paul McDougall, California Department of Housing and Community Development
23. Mike McDowell, City of Stockton
24. Scott Morgan, Governor's Office of Planning and Research
25. Allan Oto, DWR
26. Connie Perkins, City of Sacramento
27. Dave Peterson, Peterson Brustad Inc.
28. Ricardo Pineda, DWR
29. Harriet Ross, ATKINS
30. Corinna Sandmeier, Sacramento County
31. Robert Sherry, CA County Planning Directors Association
32. Brian Smith, DWR
33. Yung-Hsin Sun, MWH
34. Jim Stone, City of Manteca
35. Ivonka Todt, Floodplain Management Association
36. Claire-Marie Turner, USACE Sacramento District
37. Stu Williams, City of Sacramento
38. Rebecca Wills, City of Oakdale
39. Gary Yagade, ATKINS